

Emilio Betti : A Humanist between Law and Philosophy

Editors: **Gaspere Mura, Angelo Antonio Cervati and Vinicio Busacchi**

Emilio Betti was not only one of the greatest Romanists and jurists of the contemporary era, but a historian and philosopher.

As a law scholar, his writings on the great themes of legal history and on the philosophers who have dealt with them certainly deserve a reconsideration and critical evaluation. Among other things, Betti's analysis of the role of jurists and their *prudential* deserves attention. These are analyses and reflections on the different eras of Roman history, both during the Republic and in subsequent eras, which are still of absolute relevance today. In particular, it is the debate on pandectics and the importance of critique of European pandectics that marks an epochal shift in the study of law. Betti is an eminent scholar of law, who has studied it in all its forms, always studying law from a historical and dynamic perspective, and has been a teacher not only of Roman law, but of various legal disciplines, and above all of subjects that had the current law as an object, in particular contemporary law.

From a philosophical point of view, Betti's hermeneutics aims to be an alternative to Rudolf Bultmann and Hans-Georg Gadamer's approaches whom he considered as subjectivists, although it is necessary to underline the strong relationship between Betti and Dilthey's thought, and also Gadamer's, who are continuously cited in the *Teoria generale dell'interpretazione (General Theory of Interpretation)*. For Betti, they represent a constant point of reference. Betti, in fact, in the wake of Dilthey, does not fully adhere to German historicism, and the central point is represented, as for Dilthey, by the critique of historical reason; and for this reason Betti has not given great importance to the study of the systematic profiles of juridical thought and to the connections of doctrinal elaboration with living law.

For Betti, it is very important to recognise an objective character to legal interpretation, which manifests itself through the connections of jurists' evaluations with real life. Jurists, by their knowledge of the world through their direct experiences and through the connections between their statements and real life, can reach an important level of knowledge, which can become an exemplary model of the same philosophy. Intending and interpreting constitute for Betti, as for Dilthey, the central point of hermeneutical philosophy, and it is for this reason that the contrast with Gadamer, who Betti cites continuously, quoting passages from the works and a letter from Gadamer himself, does not constitute, as some interpreters want, an element so important that it can be placed at the centre of a controversy which is not in fact fundamental.

As Jean Grondin says: «On a souvent voulu voir dans l'herméneutique pré-heideggerienne une méthodologie des sciences humaines. Si l'idée remonte bien à la fin du XIXe siècle, cette méthodologie herméneutique des sciences humaines n'a vraiment été élaborée de façon systématique qu'après Heidegger et en réaction à sa conception ontologique de l'interprétation, par le juriste italien Emilio Betti» (J. Grondin, *L'herméneutique comme science rigoureuse selon Emilio Betti* [1890-1968]. *Archives de Philosophie*, 53[2], [1990]: 177–198). In the various attempts to organise the different addresses of twentieth-century hermeneutics, Betti's philosophical research on interpretation has therefore always had – and not wholly inaccurately – a particular position. J. Bleicher (*Contemporary Hermeneutics: Hermeneutics as Method, Philosophy and Critique*. London-Boston-Henley: Routledge and P. Kegan, 1980) considers Betti the paradigmatic reference of the *methodological* address of contemporary hermeneutics, as opposed to Heidegger, Gadamer, Bultmann, Fuchs and Ebeling's *ontological* address, to Apel, Habermas, Lorenzer and Sandkühler's *critical* approach, and to Paul Ricoeur's phenomenological-hermeneutical approach.

Betti concentrated mainly on the study of legal dogmatic from a historical and scientific perspective of interpretation, strongly rejecting the universalisation of hermeneutical thought both in an ontological and "existentialist" sense (he would certainly have rejected the idea of interpretation as productive contemporary *koinè*). At the same time, however, his scientific and philosophical research is crossed by another reason of interest and concern – worthy of clarification and further study –, we mean the concern and interest on *humanism*. This concern and interest is clearly reflected in the legal knowledge itself which, in Betti's idea, must be characterised by the need to pursue objectives in a practical sense, not scholastic doctrines or political ideologies.

In fact, Betti can be considered as the main contemporary exponent of that "veritative hermeneutics" which never ceases to pursue the "truth" of interpretation, coming to formulate in the famous *Teoria generale dell'interpretazione* a series of principles and methods capable of opening interpretation to understanding "interpretandum", that is the "object" of interpretation consisting for Betti of all those "representative forms" which are the products of the spirit of man in history. Moreover, Gadamer himself, often opposed to Betti, in a report given in 1960 to the "Deutscher Kongress für Philosophie", titled: *Die Natur der Sprache und die Sprache der Dinge*, published later in the second edition of *Truth and Method*, places an important difference between the "nature of the thing" and the "language of the objects", stating similarly to Betti, that the *Sachlichkeit*, or the "concreteness", assumes a role of command in front of the person, as it requires to be recognised and to be interpreted in its intimate and real constitution. What Gadamer himself calls "objectivity", in the jurist Betti is coloured by the Roman juridical concept of *res*, which indicates a relational relationship not only between the interpreter and the thing, but also between the interpreter and all the horizon of interpretations of *res* which is concretely represented by the historical doctrinal and jurisprudential tradition, which therefore is not available to the discretion of the singular interpreter. Betti therefore emphasises the need for hermeneutics to respect the otherness and truth of the "object" of interpretation.

It is in this sense that he strives to remain faithful to the tasks of a historical and evaluative conception of interpretation, which is able to question itself, with the necessary critical detachment, both from the conflicting interests of the protagonists of political and economic life, as well as from those of parties to individual juridical disputes. Betti considers the educational moment to be essential, because from it the dynamic meaning of the experiences that the jurist makes in evaluating real phenomena is derived, also in order to better use the hermeneutic and evaluative paths.

Alongside the reflection on the placement of Betti's work in the contemporary legal and philosophical panorama, and on the characteristics of its hermeneutics as a methodology for the human and social sciences, we ask ourselves what are the key references and constitutive characteristics of Betti's Humanism, how it is understood and applied today in both the legal and philosophical fields, and what perspectives it opens up.

In the broad field of research and reflection that opens, it is suggested (not in a strictly binding way) that we identify the following thematic-problematic areas:

- The problem of interpretation between technique and philosophy
- Hermeneutics as a methodology for the human and social sciences
- The relevance and actuality of Betti's work within the juridical and philosophical domain
- Betti's philosophy as a response to hermeneutical subjectivism
- Betti's antirelativism
- Is Betti a critical realist?
- Hermeneutics and pedagogy between law and politics (that is, the reconsideration of Betti's interpreters: Adelchi Baratono etc.)
- Betti's hermeneutics and the theory of artistic interpretation (painting, literature, music etc.)
- Betti's humanism
- Actuality and critical-philosophica-jurical aspect of the *Teoria generale del negozio giuridico* (1943)
- Actuality and critical-philosophica-jurical aspect of the *Teoria generale delle obbligazioni* (1953-1955)
- Actuality and critical-philosophica-jurical aspect of the *Teoria generale dell'interpretazione* (1955)
- Betti's hermeneutics and theology

Author Guidelines: ojs.unica.it/index.php/ecch/about/submissions

Language: English, Italiano, Português, Français, Español, Deutsche

Deadline: 31 March 2021